

179171  
1253 Harlees Bridge road  
Dillon SC 29536

April 17, 2006

Mr. Charles L.A. Terreni  
Chief Clerk/Administrator  
P.O. Drawer 11649  
S.C. Public Service Commission  
Ph:1 803 896 5713/5230; Fax 1803 8965231

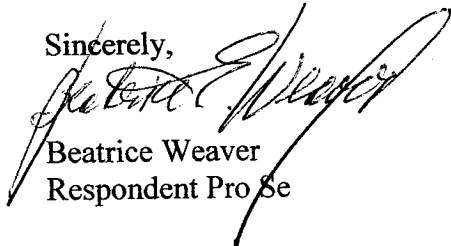
Dear Mr. Terreni:

Subject: Memorandum In Support of Objections and Petition for  
Reconsideration  
Ref: Progress Energy File No: 2004-219-E

Further to my letter of transmittal dated April 11, 2006, enclosed please find one copy of my **Memorandum In Support of Objections and Petition for Reconsideration and Rescission of Commission Directive Filed April 4, 2006.**

Please instruct me if additional copies of the pleading are required or if your Office can handle the situation. I do not have any equipment for reproduction and cannot drive into town.

Sincerely,



Beatrice Weaver  
Respondent Pro Se

Cc: Parties of Interest

RECEIVED  
APR 25 2006  
PSC SC  
MAIL / DMS

BEFORE

RECEIVED

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

APR 25 2006

April 11, 2006

PSC SC  
MAIL/DMS

In the Matter of

Petition of Progress Energy Carolinas, Inc)  
To Terminate Service

)  
)  
DOCKET NO. 2004-219-E

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)  
MEMORANDUM IN SUPPORT  
OF OBJECTIONS, MOTION  
FOR RECONSIDERATION AND  
RESCISSION OF DIRECTIVE;  
EXHIBITS A-B

**MEMORANDUM IN SUPPORT OF OBJECTIONS AND MOTION FOR  
RECONSIDERATION AND RESCISSION OF COMMISSION DIRECTIVE**

**INTRODUCTION**

On or about April 7, 2006, Respondent Pro Se Beatrice Weaver ("Respondent") received a copy of the "Commission Directive" dated April 4<sup>th</sup>, 2006, that was mailed to Respondent on or about April 5, 2006. Said "Commission Directive" has no reference number and Respondent was unclear as to the exact status of the Directive with respect to the Commission's regulations requiring timely filing of these Objections and Motion for Reconsideration and Rescission in accordance with the respective time constraints of Regulation 103-881 B, and Code Section 58-27-2150. The regulations are silent on whether or not a "Commission Directive" is the equivalent of an "Order" as defined in the regulations, insofar as the ten or twenty day limit on filing Objections and Motions are concerned.

This was an important issue for Respondent who is undergoing eye surgery on April 12, 2006 and is not certain when she could attend to filing the Objections and Motion for Reconsideration (Rehearing). See, **Exhibit A** hereto. Accordingly, Respondent made formal enquiry of the Commission staff for clarification. Note that the Commission has been scrupulous in selectively applying the regulations to Respondent in

juxtaposition to its on-going laxity and cooperative posture in accommodating Petitioner's process as discussed herein.

Based on the information received from the Commission staff that a Directive is issued prior to an Order, and that the Commission's Order in this matter is forthcoming, Respondent has concluded that it is prudent and appropriate to timely file these Objections and Motion for the Commission's consideration.

First, it is not clear if Respondent can meet any filing time constraints following her surgery on April 12, 2006; secondly, because Code Section 58-27-2150 refers to an "Order or Decision" with respect to the ten day filing time limit. Respondent observes that a "Directive" is in fact a "Decision," without putting too fine a point on the subject.

Given the Commission's generally adverse posture towards Respondent an S.C. consumer, relative to its cooperative, obliging, and accommodating posture towards the Petitioner a N.C. conglomerate electric utility, the decision was made to file the attached pleadings based on the Directive viewed as a "Decision" as defined under Code Section 58-27-2150 and in advance of receiving the Order.

**Respondent reserves the right to file supplementary pleadings of law and argument with respect to any such Order being subsequently filed by the Commission.**

This Memorandum is therefore submitted in support of Respondent's Objections and Motion for Reconsideration and Rescission of its Directive.

### **DISCUSSION**

. The main Objections to the Commission's Directive and Respondent's supporting arguments for reconsideration and rescission may be summarized as follows:

1. Clear Error
2. Abuse of Discretion
3. Abuse and Denial of Process
4. Insufficiency of Service of Process
5. Violation of Ex Parte Communication Statutes
6. Premature Administrative Action Based On Presumption of a Future Action
7. Violation of Civil Rights on Religious and Other Grounds
8. Violation of Its Own Standard Set For Continuances of This Case

9. Unclear Statement and Confusion as to Which of Respondent's Two Actions Before The Commission Was To Be Heard On April 13, 2006.
10. The Counterclaim Was Prematurely And Incorrectly Dismissed.
11. The Request For Connection Of Electric Service Remains Unsettled.
12. Condonation

The following discussion documents these objections.

## **I Irregularities with Service of Process and Due Process**

The Commission's Agenda to consider Respondent's March 10<sup>th</sup>, 2006 request to continue the hearing until after May was considered on March 29<sup>th</sup>, 2006.

The "Commission Directive" dated April 4<sup>th</sup>, 2006, was mailed to Respondent on or about April 5, 2006 and received by Respondent on or about April 7, 2006. Said "Commission Directive" has no reference number and Respondent assumes it is an "Order" issued by the Commission as defined in the Regulation **103-880**, requiring filing of these Objections and Motion for Reconsideration and Rescission in accordance with the twenty (20) day time constraints of Regulation **103-881 B**.

The "Subject" of said Directive (para.1), refers to discussion of Respondent's Motion to Continue, and Petitioner's Motion to Close Docket. The Commission denied Respondent's request to continue and directed dismissal **without prejudice**, and hence was **conveniently** able to deny the Petitioner's Motion as moot. (See, last line of last para. of the Directive).

**Petitioner's Motion to Close Docket is dated March 30, 2006, one day later than the March 29<sup>th</sup> meeting of the Commission.**

**So how could the Commission consider Petitioner's Motion one day earlier?**

Further, Petitioner mailed a copy of its Motion to Respondent dated and post-marked March 30, 2006. It was received by Respondent four days later on Monday, April 3<sup>rd</sup>, 2006, considerably later than the March 29<sup>th</sup> meeting of the Commission.

Assuming *arguendo*, that the Commission had granted Respondent's Motion to Continue on March 29<sup>th</sup>, **how could the Commission have possibly received or considered Petitioner's Motion to Close Docket, which is dated March 30<sup>th</sup>?**

Respondent did not receive a copy of said Motion until April 3<sup>rd</sup>, which of course prevented Respondent from filing a rebuttal response with the Commission.

**Insufficiency of process and actual or potential denial of due process is clear. And this violation is not mitigated by the declaration that “the motion is moot because the continuation was denied.”**

It appears to be a clever legal maneuver of administrative and regulatory manipulation of Respondent's case by the Commissioners, to accommodate and oblige the malicious intent of Petitioner in its efforts to avoid liability for its frivolous and nuisance suit that it filed initially to cover-up its continued and repeated violations of Commission regulations in its dealing with Respondent.

Having backed itself it an administrative and legal corner whereby Petitioner Progress energy is obliged to defend its long standing and repeated violations publicly in open court, particularly by its meter reading contractor Truecheck, Petitioner's Len Anthony is using the utility's undue influence on the Commission and the ORS to have Respondent's counterclaim dismissed in order to evade its accountability to Respondent who wants her “day in court”.

On April 3<sup>rd</sup>, 2006 Respondent also received a copy of a letter from Ms. Hudson of the Office of Regulatory Staff (ORS) addressed to the Commission, dated and post marked March 31, 2006. Said letter referred to Petitioner's Motion to Close Docket dated March 30, 2006. Continuing its usual and customary cooperative and cozy relationship with the Petitioner's Mr. Len Anthony, the ORS did not oppose the Motion.

Respondent submits that the Commission's actions as reported in the Directive should not have happened on March 29<sup>th</sup>, 2006. Instead, Respondent submits that the proper and correct due process under the circumstances, should have been for the Commission, as a first step, to accept or deny Respondent's Motion to Continue on medical grounds dated March 10, 2006; **and/or issue Respondent a formal Notice that if she did not appear or have a representative appear at the April 13<sup>th</sup> 2006 Hearing, her counterclaim would be dismissed.**

Compounding its errors, the Commission erroneously but conveniently for itself, declared Petitioner's Motion to Close the Docket to be moot, even though it was dated March 30, 2006, had not been filed until the next day or later, after the Meeting on March 29, 2006.

Indirectly, by incorrectly and conveniently denying Respondent's Motion to Continue and thereby incorrectly dismissing Respondent's counterclaim, the Commission in effect granted de facto, Petitioner Progress Energy's unfiled motion on specious grounds.

**The Commission's declaration was an incorrect, premature application of Regulation 103-868 based on a presumption of a future, unpredictable action. This is a flagrant violation of rules, procedures and Respondent's rights.** Compounding its abuse of process, the Commission has engaged in a blatant and accommodating illegal abuse of administrative and regulatory authority.

**The conclusion is obvious.**

Contrary to the applicable State Statutes, ex parte communications must have occurred between the Commission, the Petitioner and the ORS **without the knowledge, notice to, or involvement of Respondent;** that the Commission and the ORS must have known about the Petitioner's proposed Motion to Close the Docket prior to the March 29<sup>th</sup> meeting to discuss Respondent's Motion to Continue.

Respondent concludes that there must have been clearly covert administrative and regulatory collusion, condonation and cooperation with the Petitioner concerning the handling of both Respondent's Motion to Continue and Petitioner's Motion to Close the Docket. Irrespective of its merits or otherwise, the latter motion should not even have been considered or discussed on March 29<sup>th</sup> since it is dated March 30<sup>th</sup>, 2006 and Respondent was not given timely notice of the motion in any case. As noted, the position of the ORS with respect to handling of Petitioner's motion is highly suspect, and will be addressed at an appropriate time.

Nor should the Commission have taken action to approve Petitioner's motion **de facto, until after a new date for Hearing was set on the Motion to Continue.** Respondent submits that the Petitioner's motion is without merit in any case, and in particular has deliberately misconstrued the facts, as usual. Respondent will file a rebuttal at the appropriate time.

Notwithstanding the philosophy of separation of church and state, it is inappropriate on religious grounds for the Commission to schedule a hearing on the day of a major religious observation such as Passover, and religious celebrations extending

from Easter Friday for several days. Such a travesty should be obvious to the Commissioner who is also a Church Deacon.

In conclusion, based on the above discussion, Respondent files these Objections for the record and for appeal if and when necessary.

#### **Additional Observations**

For the purposes of this Motion for Reconsideration, Respondent believes it is not relevant to file a rebuttal at this time, in opposition to Petitioner's Motion to Close the Docket, since the issue is moot until such time as the Commission re-opens the case as requested herein, or on appeal.

The Commission should note, it is Petitioner that initiated this action before the Commission, not this Respondent who filed a compulsory Counterclaim. **The Commission now wants to obligingly accommodate Petitioner and deny said counterclaim on specious arguments and questionable legal grounds, in a questionable legal maneuver designed and manipulated to specifically assist the Petitioner's Len Anthony.**

Further, the subject of whether or not Respondent owes Petitioner any money was incorrectly brought up by Petitioner in opposing Respondent's request for establishing a new account and connecting power to her residence, **not a subject of the Hearing scheduled for April 13, 2006.**

Petitioner's misleading claim is made under the "doctrine of necessities" which does not apply in this case, despite Petitioner's suspect legal contortions in presenting this argument. **Petitioner's Mr. Anthony has refused to declare under oath, and provide a detailed breakdown on the amount allegedly owed by Respondent to Petitioner. The Commission has turned a blind eye and neglected to compel him to provide that information. He cannot, which is why he refuses to file a notarized statement under oath as Respondent has requested.** A separate memorandum will be filed on that issue for the record in due course, given the facts, when the question is addressed by the Commission. Petitioner wants to avoid that.

Moreover, Respondent's counterclaims in this action or the request to open an account and to connect power to Respondent's residence are **not issues** before the Dillon Court Jury as fraudulently referred to in Petitioner's letters and Motion. These causes are

the subject matter for the Commissioners to adjudicate, not the Dillon Court Jury as fraudulently claimed by Petitioner.

The only duplicated issue before this Commission and the Dillon Court Jury is whether or not Respondent owes Petitioner any money under Petitioner's claim of application of the doctrine of necessities, which does not apply to the case. **And it is Petitioner's Mr. Anthony, not this Respondent who brought up this issue in both venues.**

Since Petitioner introduced the doctrine of necessities issue to the Commission in opposition to Respondent's separate action to request connection of power to Respondent's residence, **it has to be heard administratively.** Unless of course the Petitioner, in further collusion with the Commission, shall create a way to avoid the issue.

That is exactly what the Commission has done in dismissing Respondent's counterclaim in this action by erroneously latching on to the "continuance" issue, and its premature presumption that Respondent would or could not make arrangements for herself or a representative to be present at the April 13<sup>th</sup> 2006, Hearing, under protest, duress and threat of dismissal. Respondent thus reserves the right to file supplementary papers in rebuttal of Petitioner's Motion to Close the Docket, particularly as to appeal.

## **II. Denial of Due Process of Law**

Due to the **exigent circumstances** which should by now be well known to the Commission, as of this date Respondent has not yet even had an opportunity to file rebuttal statements with the Commission in response to any and all of the many pleadings, correspondence, and papers filed with the Commission and the ORS by Petitioner's Mr. Len Anthony with respect to Respondent's counterclaim and the Petitioner's initial frivolous and nuisance Petition. **These rebuttals remain outstanding. Respondent has prematurely been denied the legal right and opportunity to file said rebuttals.**

Nor has Respondent had the opportunity to pursue any **Discovery**, and as the record shows, Petitioner has been uncooperative in that regard refusing to document its claims, condoned by the Commission and the ORS which has sat on its hands. The ORS in fact has done nothing whatsoever in this case in terms of "consumer protection." It has



done nothing to fulfill its mandate with respect to this Case. On the contrary, the ORS has in fact adopted an adversary role in this case, and regulatory “consumer protection” has been elusive. Ms. Hudson’s comments are of no value, irrelevant and immaterial, a subject to be addressed in greater detail in the future. Respondent has not closed her docket on the ORS in this matter.

Accordingly, by dismissing Respondent’s case on spurious and highly questionable grounds, the Commission **denies Respondent the right to be heard on the Counterclaims**. For this, both the Commission and the ORS must be held liable and accountable in due course.

**The dismissal of the counterclaim was premature on the Commission’s stated grounds of Respondent’s prospective non-appearance at the Hearing on religious grounds, or “too many continuances” notwithstanding the medical reasons for each and every continuance, Respondent’s absence from the State since Fall 2004 through December 2006, and in view of the subsequent Motion to Continue for medical reasons—i.e., surgery on April 12<sup>th</sup>, 2006.**

As discussed herein, the proper procedure would have been for the Commission to issue Respondent a Notice of Intent to Dismiss her counterclaim if she or a designated representative were not present at the Hearing on Passover, April 13<sup>th</sup>, 2006 and not to cancel the Hearing outright. The Hearing was two weeks away from the date of the Commission’s meeting on March 29<sup>th</sup>, 2006 to discuss the Motion to Continue.

As noted, the issue of **Respondent’s right to have the use of electricity at her residence is a separate issue from this action**, yet to be addressed by the Commission. It is not a subject of the scheduled April 13<sup>th</sup> Hearing. It remains an outstanding issue.

**The Petitioner would have the Commission believe otherwise.**

In 2004, Daniel H. Shine, Esq. applied for connection of power on behalf of Respondent for the purpose of operating a “B & B” enterprise. It was Petitioner’s Mr. Len Anthony who maliciously and improperly introduced this issue into the Commission proceedings, not this Respondent. See, Mr. Anthony’s letter to Mr. Shine which has yet to be rebutted by Respondent and processed through the courts.

In a separate action from the counterclaim in this action, Respondent raised this issue before the Commission in December 2005 asking it to intervene. It has not been

resolved, and is not closed. In fact this issue is still an on-going violation of Respondent's rights by Progress Energy and its agents, and continues to be ignored by the Commission and the ORS. Respondent is the Party bearing the burden of this regulatory transgression for which there must be an accounting for dereliction of duty resulting in the infliction of undue burden, physical hardships, illness, economic losses, emotional stress, and denial of protection.

### **III. The Directive Is Confusing with Errors and Omissions**

The "Subject" of the Directive and presumably the Agenda of the **March 29<sup>th</sup>** meeting, is stated to be Respondent's Motion to Continue and discussion of Mr. Len Anthony's Motion to Close Docket **dated March 30, 2006**, of which Respondent did not have a copy until Monday, April 3<sup>rd</sup>, 2006. As noted herein, how could the Commission discuss a motion that was not filed and dated until one day later than the March 29<sup>th</sup> meeting, and filed two days after the meeting? And no rebuttal from the Respondent?

On the basis of faulty logic and premature conclusions and presumption, the Commission incorrectly denied Respondent's Motion to Continue and on that basis "pursuant to S.C. Code Ann. Regs 103-868 dismiss **this matter**". It is not clear from the Directive, what exactly is the "**matter**" it dismissed.

As noted, Respondent has a **counterclaim** against the Petitioner who initiated this action. Respondent has also initiated an entirely separate claim for **connection of electric power service to her residence** in December 2005. The latter action is not part of the action in the above entitled frivolous and nuisance case, that was fraudulently initiated by Petitioner.

**In short there are two separate issues for adjudication by the Commission.** They are not connected, but two separate actions which have not been formally consolidated by any party. One is related to the action commenced by Petitioner and Respondent's counterclaim thereto, and one is related to the separate action initiated by Respondent.

1. **The Progress Energy Action:** This action is related to Respondent's filing in April 2004 of a complaint and request for investigation to ORS handled by "Investigator" Mr. Chad Campbell:

a. The complaint referred to trespassing and other regulatory violations by Progress Energy's meter reading agent "Truecheck" and regulation violations by Petitioner's Ms. Pam Hardy and Mr. Cagle with respect to the property located at 1249 (formerly 1253 B) Harllees Bridge Road, Dillon SC 29536, an adjacent property separated by driveways and fences, some 300 feet from Respondent's residence.

b. That initial complaint of Respondent was countered by Progress Energy's Mr. Len Anthony filing two frivolous and nuisance petitions with this Commission, both of which were entirely without merit and merely designed to cover-up the utility's violations of the regulations. The initial petition was withdrawn with Commission approval, notwithstanding that it was entirely without merit and dereliction of duty by the Commission..

c. Progress Energy's second frivolous and nuisance petition was to disconnect electric service to Meter No B 91771 located at 1249 Harllees Bridge Road address. There is no meter at Respondent's residence as Progress Energy has removed it.

d. That petition was also subsequently withdrawn with approval of the Commission "without prejudice" to which Respondent has objected on the grounds that it should be "with prejudice.". That objection is still before the Commission and Mr. Anthony wants it dismissed so that he does not have to defend his irresponsible, frivolous and nuisance action in abuse of process. The Commission has accommodated his wishes on March 29<sup>th</sup>, 2006 with its improper dismissal of Respondent's counterclaim. With approval of the Commission, Mr. Anthony has refused to respond to Respondent's request to state under oath exactly what "conditions" have changed that prompted his withdrawal of his second petition.

e. .Following the filing of Mr. Anthony's frivolous second petition, Respondent filed her counterclaim with the Commission which remains unsettled. In 2004 Respondent was declared to have carcinoma, and a year later declared to have a second case of carcinoma. Together with other series of operations this has prevented her from prosecuting this case for which she is now being penalized by the Commission.

Respondent's counterclaim is what Mr. Anthony wants dismissed so that he does not have to account for the many violations of Commission regulations by his meter reading agent "Truecheck", Ms. Pam Hardy and Mr. Cagle both employees of the

Petitioner, and himself. There are also unnamed witnesses that perjured themselves and are yet to be held accountable. As noted, Respondent has not yet had an opportunity to prepare this case due to the exigent circumstances well known to the Commissioners who by their actions on March 29<sup>th</sup>, 2006, wish to cooperate with Mr. Anthony.

2. **Respondent's Action:** The second action initiated by Respondent is entirely separate from the petition and counterclaim noted above. Respondent's second action before the Commission is her application for electric power connection to her residence on several occasions: originally in July 2002; repeated in April 2004, and again in December 2005. All have been denied by Progress Energy on questionable grounds by Mr. Len Anthony. This second action is not before the Dillon Court Jury, only the Commission.

The only objection to connecting power to Respondent's residence, as cited by Mr. Anthony, is the "doctrine of necessities" which, as will be shown at trial, does not apply in this case. Under this doctrine Mr. Anthony improperly claims that Respondent owes his company money and that is the purported reason for not connecting power as requested by Respondent. Mr. Anthony refuses to swear under oath as requested by Respondent, as to exactly how much, for what accounts, when contracted, and what documentary proof he has to justify his claim that Respondent owes money to the utility. **The Commission has refused to compel Mr. Anthony to comply with Respondent's request for that proof of claim.**

As noted, it is Mr. Anthony who has improperly introduced the erroneous "doctrine of necessities" argument to the Commission in defending his refusal to connect power to Respondent's residence, and in opposing Respondent's request for the Commission to intervene; and to the Dillon Court Jury in support of his erroneous claim that Respondent owes his company some money.

Since the matter of Respondent's request for power connection is properly before the Commission for Administrative Relief, it is Mr. Anthony who has duplicated the venues with the malicious intent of confusing the issues. Since the matter of power connection is not part of Respondent's counterclaim, but a separate issue, it still remains before the Commission for adjudication.

### **3. Commission Action**

Neither one of the above described two separate issues was on the Commission's March 29, 2006 or April 13, 2006 Agenda, nor a subject of the Directive. The Directive refers only to Respondent's Motion to Continue on medical grounds, and in violation of due process, Petitioner's Motion to Close the Docket which was not even duly filed until March 30, 2006 or later (exact date yet to be determined).

The Directive refers to Respondent's **counterclaims** as a subject of continued Hearings. (Line 3, para. 3, page 1). Correctly **the Directive does not refer to Respondent's request for the Commission to order Progress Energy Inc to connect electric power to her residence.**

Since no Agenda for the April 13<sup>th</sup>, 2006 Hearing has been forthcoming from the Commission, only the Counterclaim was the subject of that Hearing. **Consideration of Petitioner's Motion to Close the Docket was precluded by improper service of process and abuse of process, even though it was declared "moot."** Respondent's request for power connection is not part of the above entitled action, and thereby precluded from any order of the Commission under the Directive. That issue remains outstanding and Respondent looks to the Commission to process the request and rule in her favor. The two actions Respondent has before the Commission are not consolidated cases, nor are they related, although Petitioner has tried to connect the issues.

As noted herein the Directive has prematurely dismissed Respondent's Counterclaim on March 29<sup>th</sup>, on the speculative grounds that Respondent or a representative prospectively would not be present at the Hearing scheduled two weeks later for April 13<sup>th</sup>, 2006.

**It is not clear and remains to be determined exactly what "matter" was discussed and dismissed at the Commission's March 29<sup>th</sup> 2006 meeting; i.e.,:**

1. Respondent's Motion to Continue on Medical Grounds (March 10, 2006);
2. Respondent's Motion to Continue on Religious Grounds (February, 2006);
3. Respondent's Counterclaim (2004);
4. Petitioner's Motion to Close the Docket (March 30, 2006);
4. Respondent's Separate Request to Connect Electric Power.  
(12/2005; 5/2004; 7/2002)

Respondent submits that the Commission has violated due process of law, and erred by improperly dismissing Respondent's March 10, 2006 Motion to Continue on medical grounds, and hence improperly dismissing the counterclaim in the first place. The Commission's argument for dismissal is built on a "house of cards," unbecoming of a State Public Regulatory Agency.

#### **IV. The Issue of Burden**

The Commission claims that it has "spent a great deal of time dealing with Mrs. Weaver's repeated eleventh-hour requests for continuances," and that Respondent was unable to attend several previous meetings. The legitimate medical causes for this situation have been thoroughly documented on file. Respondent was out of S.C. State almost continuously since Autumn 2004 when first diagnosed with carcinoma, until the end of 2005 when she returned for the holiday season at the end of December.

It is reasonable to ask how the Commissioners could possibly object to Respondent's genuine physical inability to attend its hearings for serious medical reasons (carcinoma and eye operations), and to her reasonable requests for continuances under the legitimate truly exigent circumstances.

Conversely it is **unreasonable** for the Commission, by any equitable standard set by the Courts or just plain common sense and decency, to deny continuances for legitimate documented reasons supported by Certificates of Medical Necessity issued by medical doctors, and to object or refuse to do what Commissioners are mandated by statute to do; i.e., to fairly administer the rules for S.C. consumer protection against a highly profitable, billion dollar N.C. conglomerate and its counsel and his team of lawyers.

It is not clear in the Directive, which of the reasons for continuance prompted the Commission to erroneously cancel the Hearing and illegally dismiss Respondent's counterclaim: is it on grounds of the religious objection for holding a Hearing on a Passover, or is it Respondent's surgery date at Medical University of South Carolina on April 12<sup>th</sup>, 2006 when the surgeon was available. See **Exhibits A and B.**

Under the circumstances explored in this argumentation, it is reasonable to suspect that the Commissioners may have had a hidden agenda underlying the improper dismissal of the case that is so important to Progress Energy's Mr. Anthony.

**Who Carries the Burden?**

**Above all, it must be noted that Respondent is the only party who is burdened by this case.**

Continuing the case as requested by Respondent and for the reasons stated, **represents absolutely no burden on the Commissioners, its staff,** and certainly not the Petitioner. The Commissioners and staff, (and the ORS) are amply paid by S.C. taxpayers and ratepayers to regulate the energy industry, and they are specifically mandated to provide S.C. consumer protection, **which is what this action is all about**---Petitioner's harassment of Respondent, its abuse of the regulations and due process, and the lack of supervision and consumer protection by the S.C. regulatory agencies which respond positively to the undue influence of the Petitioner, Progress Energy.

In Respondent's case, it can be said in all candor that the Commissioners and the ORS have jointly and severally failed miserably, each in its own way, with the flagrant dereliction of their respective mandates under the statutes to provide consumer protection.

It is the Petitioner not the Respondent, who started this action with a vindictive, frivolous and nuisance suit in the first place, placing Respondent under extreme burden and hardships as to her health, quality of life, emotional stress, denial of electricity, harassment, and great economic loss, etc. The negligence of the respective regulatory agencies with respect to the conduct of this case has compounded and contributed to these adverse impacts on Respondent.

Mr. Len Anthony's objective in filing the two frivolous and nuisance petitions in the first place and seeking dismissal of Respondent's case now, is to cover up his repeated violations of South Carolina utility regulations in dealing with this Respondent.

Petitioner's employees and agents have repeatedly harassed, lied and misrepresented its case, with impunity, to the Commission and ORS, and must be held accountable and liable to Respondent. Since it is obviously doubtful this will ever happen at the Commission, and dismissing the captive, innocuous ORS, it seems clear *that*

Respondent will have to resort to the courts and/or other State and Federal investigative authorities.

**V. The Commission Has Violated Its Own Standard**

.Discussion in the Commission's Directive refers to the "exigent circumstances" standard it set relating to the granting of Hearing continuances in this case. The facts of the medical situation faced by Respondent since the commencement of this action are clear in this matter, thoroughly documented on the record, known and should have been known by all the Commissioners and Petitioner whose actions in fact contributed materially to the ill health problems experienced by Respondent.

The request for continuance of the April 13<sup>th</sup> Hearing date because of surgery on both eyes of Respondent on April 12<sup>th</sup>, by definition constitutes "exigent circumstances." **It stretches the bounds of incredulity and it is disingenuous for the Commission to gratuitously claim that Respondent is "unable or unwilling" to go forward and prosecute her case to its conclusion**". (See, page 2, Para 2, line 4.). Such a position defies all reasonable standards of common sense **if not community norms of common decency**; qualities that seem not "strained" in the regulation of the S.C. State's utilities.

On the contrary, it is self evident to any reasonable party that the ultimate conclusion of Respondent's persevering with the counterclaim is the precise purpose of her several requests for continuances, specifically so she can go forward and prosecute the case. It should be perfectly clear to all observers, including the Commissioners of this State, that Respondent wants "justice." The Commission's argument on that basis is self contradictory and transparently convenient for handling an inconvenient case; thus the violation of due process of regulatory law.

Moreover, it is should be clear even to the Commissioners who "bend over backwards" to assist the Petitioner, that it is Petitioner's Counsel Mr. Len Anthony who is trying to use every means including untrue, mis-leading statements, to thwart reaching a conclusion of the case before the Commissioners. Based on their cooperative performance to date, he has little to worry about with respect to the Commission's ultimate decision. The Petitioner's original suit was vindictive, frivolous and a nuisance suit, repeatedly and obligingly, **condoned by the Commission, from the outset**.



Why else would Respondent at 80 years of age in ill health, wish to continue the case other than to conclude it? And despite two bouts of carcinoma, two spinal operations and four eye operations, plus other treatments, in three hospitals from East to West, since Spring 2004 the commencement of this action, through Spring 2006, and the end is not yet in sight.

Respondent's wish is to conclude the separate second action pending before the Commission. Respondent wants electric power connected to her residence, she does not owe Petitioner a nickel, and wants justice for Petitioner's violations of Commission regulations, even though each of Petitioner's violations were done with the full knowledge, approval and support of the Commissioners and ORS staff.

**It is clearly evident to any reasonable observer that Respondent wants to conclude the case. Why else would Respondent persevere with this action?** On the other hand, it is precisely the objective of the Petitioner to prevent this by any means, including the assistance of the Commissioners and the ORS.

**VI. The Commission Erred and Based the Directive on a Rebuttable Presumption**

As of this date, and the March 29<sup>th</sup>, 2006 meeting of the Commission, Respondent has not "failed" to attend a scheduled meeting as claimed in the Directive. Respondent filed a Motion to Continue on medical grounds (the Commission's "exigent circumstances" standard) and that there was a conflict of dates precluding the opportunity for appearance.

That does not mean that Respondent under threat of dismissal of either of her causes could not have taken action under protest had the Commission denied the Motion, and then issued Respondent a timely notice of the Commission's denial.

The service of process and due process of law related to the handling of Petitioner's Motion to Close the Docket shows that the Commissioners can swiftly act, expedite and accommodate such short notice exigencies if they wish to do so. And jointly and severally, the Commission (and ORS) certainly demonstrated for all to see that they wished to accommodate and oblige counsel for Petitioner by improperly dismissing one

of Respondent's causes on spurious and conveniently contrived, legal and procedurally incorrect grounds, in a possibly illegal maneuver.

The Commission met on March 29<sup>th</sup>, 2006 to discuss Respondent's Motion to Continue the Hearing set for April 13<sup>th</sup>, 2006 on medical grounds. This was after Respondent initially objected to denial of the first motion on religious and other related grounds. (See below). That is, the Commission's meeting on March 29<sup>th</sup>, 2006, was set fourteen days in advance of the Hearing date set for April 13<sup>th</sup> on a Passover which is observed as a religious holiday.

Based on the first and second Motions to Continue, the Commission **presumed** that Respondent would not be present at the Hearing on April 13<sup>th</sup> 2006. However, as stated above, had the clear alternative been dismissal of one of Respondent's causes, with proper notice Respondent could have considered several alternatives or options including arranging to be present under protest at the Hearing scheduled for April 13, 2006.

The Commission **prematurely cancelled the April 13<sup>th</sup> Hearing** without giving **Respondent proper notice of its intentions to dismiss her counterclaim**, if she did not appear at the April 13<sup>th</sup> Hearing. Respondent received a copy of an undated "Notice of Cancellation of Hearing" on **April 8<sup>th</sup>, 2006, five days before the scheduled Hearing date and four days after receiving notice of Petitioner's Motion to Close Docket**, when it was too late for Respondent to take any action.

Citing S.C. Code Regs **103-862** and **103-868**, the Commission states that it may grant or deny requests for continuance, and may also "dismiss the matter." But the Commission did not go far enough in relying on Reg. **103-868**. It stopped too short in its application of this regulation.

Regulation **103-868** states clearly that the Commission may dismiss the petition, **if at the time and place set for Hearing**, Respondent or her authorized representative **"fails to attend personally"** without having obtained a continuance pursuant to Regulation 103-862, or upon leave of the presiding officer.

Continuance is exactly what this Respondent asked for twice in good faith, in February and in March 2006. Given a proper timely filed threat of dismissal, Respondent may have been able to attend the Hearing should continuance be denied on both

religious and medical grounds. Respondent in fact did not expect the Motion to Continue on religious grounds in February 2006, to be denied.

The Commissioner's argument for dismissal rests on the objection to Respondent's several (5) previous requests for continuances since Fall 2004 through Spring 2006; then, completely ignoring the causal exigent circumstances related to carcinoma and other medical protocols, the Commission's position does not address the merits of Respondent's counterclaim to Petitioner's original petition, or her second action requesting connection of electric power to her residence, or the Spring 2004 complaint against Petitioner's agent Truecheck, yet to be processed to a conclusion; it is not over yet..

**The Commissioner's consideration of Petitioner's Motion to Close the Docket was premature on March 29<sup>th</sup>, 2006, and constitutes a flagrant violation of due process and service of process even if heard on April 13<sup>th</sup>, 2006.** It clearly reflects illegal ex parte communications between Mr. Anthony, Ms. Hudson, the Commission and their staff, in any case. It also reflects possible violations of Respondent's civil rights.

Pursuant to Regulation 103- 803 the Commission may waive applications of the Regulations for unusual hardship or difficulty. Waiver for the documented undue burden and hardship on Respondent and the exigent circumstances, are clearly in the public interest by any reasonable standard.

By any reasonable standard, the Commission committed clear error by dismissal for Respondent's "absence" at a future event. **The Commission was premature in its enthusiasm for dismissing any of Respondent's causes.**

As noted, at the conclusion of the March 29<sup>th</sup> meeting to discuss the case, the correct process would have been for the Commission to give Respondent a **notice of intent** that if she did not appear at the April 13<sup>th</sup> Hearing date two weeks later, then her case would be dismissed.

Had the Commission given her correct advance notice of the intent to dismiss the case if she did not appear, and the March Motion to Continue denied, then as of **March 29<sup>th</sup>, 2006, Respondent would have had two weeks to make arrangements in order to be present at the Hearing, under protest, under duress and under threat of dismissal.** Similarly, the same procedure should have occurred earlier in February when

the Commission denied the Motion to Continue for objections on religious grounds, and denying Respondent the possibility to make other arrangements.

The Commission improperly denied Respondent due process of law, first in February, and then in March by improperly not granting the Motion to Continue on medical grounds, and hence dismissing her case prematurely, some 14 days before the scheduled Hearing date. The Commissioners have committed justiciable error on the presumption that Respondent would not make alternative arrangements to be present in the event the Commission **insisted** on her physical presence, in violation of the Commission's **own** "exigent circumstances" standard that was by then set for this case.

The Commission should understand that Respondent, acting under duress, protest and threat of dismissal of her case, if necessary, would have arrived from the Medical University of South Carolina in Charleston at the April 13, 2006 Hearing, in an ambulance with a nurse, in a wheelchair, and her eyes bandaged.

In such a situation, Respondent would have arranged for press conferences, media television cameras and floodlights recording the Commissioner's handling of an elder residential consumer who has been harassed now for four years by a major interstate conglomerate electric utility to which Respondent owes nothing, which is protected by the Commission and the ORS. Respondent has experience with such matters.

**Because the dismissal was without prejudice, Respondent has duly filed these Objections and Motion for Reconsideration and Rescission.**

It is clear to Respondent that the Commissioners grasped Respondent's March 10<sup>th</sup>, 2006 Motion to Continue on medical grounds, as an expedient administrative mechanism whereby, in denying the duly filed motion, and thus improperly dismissing the case (albeit prematurely) under the mis-applied cited regulations, the Commission and ORS' Ms. Hudson could co-operate in order to accommodate Petitioner. Further, by so doing, they would rid themselves of a case they have become impatient with, and thus find a way to indirectly grant Petitioner's Mr. Len Anthony his Motion to Close the Docket **de facto**, without the necessity of further legal process by the means of simply denying Respondent the due process of the law to which she is legally entitled..

## **VII. The Religious Issue**

The Directive refers to the religious issue where Respondent originally objected to the April 13<sup>th</sup>, 2006 date for the Hearing scheduled on Passover. **The Commission should not have set a Hearing for that date in the first place.** It is a date observed nationwide by faiths of all persuasions. See **Exhibit B** as an example of this fact.

Since my request not to hold a Hearing on Passover became an issue with the Commissioners who denied this Respondent's Motion to Continue on religious grounds, Respondent filed a separate Memorandum on that subject for the record on appeal. The Objection is religious prejudice and direct violation of religious and civil rights in the conduct of public matters. This is an important issue that is yet to be adjudicated by third parties at an appropriate time.

The diverse religious customs and traditions of the State of South Carolina are well established. For the Commissioners to even schedule a public Hearing on such an important religious observation as Easter and Passover is irresponsible, ill advised and contrary to all of the State's religious traditions. It is also self serving and supportive of the utility

This is not the first time of such an occurrence with the Commission. Previously the Commissioners requested a formal response from Respondent on Monday, January 2, 2006 when the Commission Offices were actually closed for the holiday season.

The Commission's expedient use of schedules operating on days of religious observance constitutes a clearly contrived means to make it difficult for parties especially residential consumers, to comply with its arbitrary demands, and more so to facilitate its cooperation and outright accommodation of the electric utilities in their on-going battle with consumers in this State. In due course this questionable mal-practice shall require public investigation and debate.

## **VIII. The Commission Violated SCRPC Rule 40.**

The Commissioner's Directive violates the provisions of SCRPC Rule 40 as discussed in Respondent's Motion to Continue dated March 10, 2006 as to the absence of material witnesses, including herself as such. The Commission is respectfully referred to the discussion on that issue in said pleading and reiterates by reference the arguments

therein. Pursuant to SCRCP **Rules 40 (i) (1) and (2)** the Commission should have continued the Hearing date for good cause.

#### **IX. Conclusion**

**Respondent objects to the Commission's Directive.** Respondent hereby seeks redress of wrongs committed by the Commission and the Petitioner in violation of S.C. State regulations and statutes, on the grounds that:

(a) the Commission has engaged in a **clearly transparent** administrative, regulatory "sleight of hand", in summarily dismissing Respondent's counterclaim prematurely on the basis of a tortuous regulatory logic that truly strains incredulity; and

(b) the disingenuous, specious and obviously prejudiced argumentation of the Commission justified improper dismissal; viz., disregarding and denying Respondent's motion that she cannot attend the April 13, 2006 Hearing due to a surgery scheduled for April 12<sup>th</sup>, and her earlier legitimate objection that Passover is recognized as a religious observation recognized nationwide as such, and that her witnesses would not travel to Colombia S.C. on Passover when all are in Church; and

(c) the irrelevant and immaterial intervention from the ORS' Ms. Hudson who neglected to undertake any proper investigation in this matter whatsoever since Spring 2004 to date, and whose actions bespeak that she operates under the undue influence and guidance of the Petitioner's Mr. Anthony; and

(d) Petitioner's inappropriate correspondence dated March 27, 2006 without proper notice to Respondent prior to March 29, 2006 and its March 30, 2006 Petition to Close Docket based on false, inaccurate and deliberately misleading arguments. This will be shown by Respondent when she submits her case to the Commission, the Courts and/or on appeal; and

(e) by its improper and prejudicial actions, the Commission has violated its public trust, unnecessarily increased the burden and economic hardship on Respondent, and unnecessarily increased the cost and duration of litigating this action and her other causes before the Commission.

**By its clearly prejudicial and improper actions manifestly favoring Petitioner in this matter, the Commission has in fact, de facto, handed Petitioner on "a silver**

**plate”, a cleverly disguised dismissal of Respondent’s legitimate counterclaim. They have done this without the “inconvenience” of a trial and Hearing, and without offer of evidence by Respondent.**

Due to unusual circumstances adequately documented and admitted by the Commission, Respondent has not yet submitted her evidence, and has not yet had an opportunity to file rebuttals to the many misleading, false and inaccurate pleadings, correspondence and papers submitted by Petitioner’s Mr. Len Anthony, in this matter.

Nor has the Commission protected Respondent against the many transgressions and abuse of process by Petitioner **throughout the entire conduct of this case**. This was done in flagrant violation of the Commission’s statutory mandate to aggressively provide consumer protection. The Petitioner has that issue well and truly “in hand” with the Commissioners, staff and the ORS, over which Mr. Anthony exercises undue influence in several dimensions with respect to this particular residential consumer case. The question is why and how that undue influence is applied.

Respondent knows she is being “shafted” by the Commission and ORS in this case as has been the situation from the outset. Respondent knows why, and how! Consumer protection per se, is apparently an alien concept at the Commission.

**The clear error, abuse of discretion and abuse of due process of law in this case is a manifest travesty of regulatory justice, and a glaring example of the absence of regulatory protection of S.C. consumer interests.**

Under the circumstances and based on the facts and arguments presented herein, for good cause, the Commission is requested herewith to reconsider its Directive and rescind its orders which improperly dismissed Respondent’s counterclaim, and to set the hearing date for some months after the end of April, 2006. At that time the Commission may consider Petitioner’s latest Motion to Close the Docket, and Respondent can file a rebuttal to that and other papers such as the March 27, 2006 letter to the Commission requesting a delay of the Hearing to accommodate its pending motion which was not properly served on Respondent.

Finally, Respondent informs the Commission that as soon as she is physically able, she plans to file several motions and petitions in this and/or new actions with the Commission, all related to the Petitioner, Progress Energy.

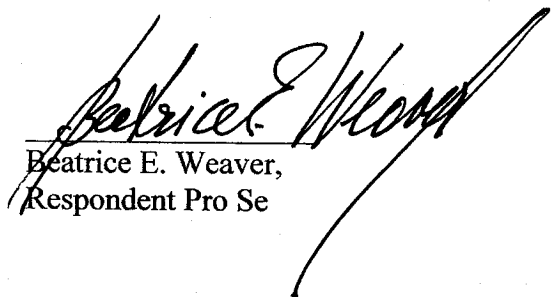
It is respectfully submitted that granting Respondent's motion for redress of wrongs would be the most expeditious way to proceed in this matter, promote the efficient operation of the Commission's business, and reduce the undue hardship and burden and cost of litigation on Respondent. The latter have been deliberately exacerbated by the calculated abuse of due process of law as a legal tactic with the objective to overwhelm Respondent, by the Commission, ORS, in collusion with Mr. Anthony who is especially guilty in this practice. The net result has been extreme emotional stress and suffering, economic losses, ill health, and denial of legal rights, for which all parties will be held liable.

**The requested extension of timing for rebuttal and discovery has directly to do with the use of Respondent's eyesight,** the need for further discovery which unusual circumstances have denied her the opportunity to date, and the Petitioner's continued and repeated refusals to cooperate and accede to the numerous reasonable and legitimate requests for production of documentation and answers, without any supportive action for discovery by any member of the Commission or the ORS.

Respondent reserves the right to submit supplementary memoranda of law and argument in this matter.

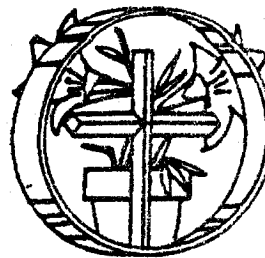
DATED: Little Rock S.C., April 11, 2006

Respectfully submitted.

  
Beatrice E. Weaver,  
Respondent Pro Se



# 2006





| Ned                  | Thu  | Fri  | Sat  |
|----------------------|--|--|--|
|                      |  |  | 1 6:00 p.m. Mass   |
|                      | 6  | 7 12:00 noon Stations of the Cross<br>6:00 p.m. Mass   | 8 6:00 p.m. Mass   |
|                      | 13 <b>HOLY THURSDAY</b><br>Mass of the Last Supper<br>5:30 p.m. Dillon<br>7:30 p.m. Marion | 14 <del>GOOD FRIDAY</del><br>12:00 noon Stations of the Cross<br>3:00 pm Celebration of the Lord's Passion (Holy Land Col) | 15 8:30 p.m. Holy Saturday<br>Easter Vigil Mass  |
|                      | 20   | 21 6:00 p.m. Mass<br>                   | 22 6:00 p.m. Mass<br><br>Betty & Ralph Taylor's 50th<br>Wedding Anniversary<br>Celebration |
| Women's Club Meeting | 27   | 28 6:00 p.m. Mass<br>                  | 29 6:00 p.m. Mass  |
|                      |  |  |  |

EXHIBIT "A."



\*PTINSTRUC\*

Pre-operative Instruction Sheet  
AMBULATORY SURGERY  
First Floor, Rutledge Tower  
(843) 876-0116

**MUSC**  
MEDICAL UNIVERSITY  
OF SOUTH CAROLINA

Wheeler, Beatrice  
MRN# 1560294

Form Origination Date: 3/05  
Version: 2

Page 1 of 1

Version Date: 9/05

Patient Name \_\_\_\_\_  
MRN \_\_\_\_\_

STAMP PLATE AREA

1. Come to the first floor Rutledge Tower, Ambulatory Surgery check-in room 111. Bring insurance cards and your medications or a list of medications with you. *9:15 Am*

You will be called between 2:00 pm -- 4:00 pm the working day before your surgery to let you know your check-in time. If you do not wish to wait for our phone call, you may call us during these hours at 843-876-0116 to get your time.

Park in the Ashley-Rutledge Parking Garage. You may enter from either Rutledge or Ashley Avenues.

Bring your ticket with you and we will stamp it for free parking.

Please do not bring more than two people with you to the waiting room. This will avoid crowding. Children in the waiting area must be attended by an adult at all times.

2. **IMPORTANT:**

- Do not eat any solid food or drink any milk or milk products after midnight the night before your surgery.
- You may have only apple juice, water, 7-Up® or black coffee (no sugar or cream added) until 2 hours before your check-in time and nothing after that.
- Please take your morning medications with a sip of water.
- If you are a diabetic, tell the doctor or nurse. Your morning insulin or medication will be adjusted.
- We recommend that you do not smoke or drink alcohol before surgery

3. Bathe or shower the night before or morning of surgery.

Brush your teeth the morning of surgery.

Wear comfortable clothing -- remember you may have a large bandage for your clothes to go over

4. **DO NOT** wear jewelry, body piercings, finger nail polish or contact lenses.  
**DO NOT** bring valuables such as wallet, purse, credit cards or a lot of money.

5. You must have a responsible adult with you to take you home after your surgery and to sign your release papers. Because of the medications that you will be given during your operation, you cannot drive or take a taxi home alone. This is for your safety. Your surgery will be cancelled if you do not have a ride.

6. If you develop a cold, sore throat, fever or the flu before your surgery, call your doctor.

Other instructions: \_\_\_\_\_

RN Signature / Date \_\_\_\_\_

ambpraopinstruc

Patient or authorized person \_\_\_\_\_

OTE 700142 Rev. 9/05

*EXHIBIT B*